

Dame Anne Russell, Widow, Appell. Lytton Lytton, Esq; Resp.

The Right Hon<sup>ble</sup> Rebecca Vis<sup>2</sup> Appell. The said Lytton Lytton, Resp.

### The Respondent's C A S E.

These Appeals are against a Decree made by the Right Honourable the Lord High Chancellor of Great Britain, assisted by the Right Honourable the Master of the Rolls, the Lord Chief Justice Trevor, and Mr. Justice Tracy.

The Estate in controversie consists of Nine Mannors and Lands of the annual Value of 3000*l.* and more, which for many Generations and Descents have been enjoy'd in the Name of the *Lyttons*, which is a very ancient Family. Of which Estate

**S**ir Rowland Lytton being seized in Fee (*viz.*) of the Mannors of *Knebworth*, *Letchworth*, *Hanchets*, *Maudlebury*, *Broxburne* alias *Canwicks*, *Ansty*, *Half-Hide* and *Homelyes*, and of divers other Messuages, Lands, Tenements and Hereditaments in the County of *Hertford*.

And also the Mannors of *Stotfold Newnham* and *Stotfold Brays*, and divers other Messuages, Lands, Tenements and Hereditaments in the County of *Bedford*.

The 1st Settlement by Sir Rowland Lytton, 20 Feb. 1665. Upon the Marriage of Sir *William Lytton* his eldest Son with *Mary Harrison*, settled the said Mannors of *Maudlebury* and *Broxburne* alias *Canwicks*, and divers other Lands and Hereditaments of the Value of 700*l. per annum*, upon Sir *William* for Life, Remainder to the said *Mary* for Life for her Jointure, Remainder to the Heirs Males of the Body of Sir *William* by the said *Mary*, Remainder to Sir *Rowland* and the Heirs Males of his Body, Remainder in Fee to the Right Heirs of Sir *Rowland*.

And as to the Wood and Woodlands, to the Use of Sir *Rowland* for Life, Remainder to Sir *William* for Life, and to Trustees during his Life, and to his first and other Sons in Tail Male by *Mary* his Wife, Remainder to Trustees, to raise Portions for Daughters, Remainder to his first and other Sons in Tail Male by any other Wife, Remainder to Sir *Rowland* in Tail Male, Remainder to Sir *Rowland* and his Heirs.

And by the same Deed the said Mannors of *Half-hyde* and *Homelyes* and of *Stotfold Newnham* and *Stotfold Brays*, were settled upon Sir *William* and the Heirs Male of his Body by the said *Mary* his Wife, Remainder to Sir *Rowland* and the Heirs Males of his Body, Remainder in Fee to the Right Heirs of Sir *Rowland*. And by the same Deed the said Mannors of *Knebworth*, *Letchworth* and *Hanchets*, were settled upon Sir *Rowland* for Life, Remainder to Sir *William* for Life, with Remainder to the first and other Sons of Sir *William* in Tail Male as before, Remainder in Fee to the Right Heirs of Sir *Rowland Lytton*.

2d Settlement by Sir Rowland of Part of the said Estate, 2 Octob. 1672. After the said Settlement of the 20th of February, 1665. Sir *Rowland*, by Fine in *Hilary-Term*, 1672, and by Deed dated the 2d of October, 1672, reciting, that by the Settlement dated the 20th of February, 1665. several of the Mannors and Lands therein mentioned, were limited

to him in Tail Male, *Did for thee Barring the said Intail in him and to enable him to have the Free Disposition thereof, and to settle the same in his own name and blood, settle the said Mannors and Lands upon Sir Francis Russell (the Appellant the Lady Russell's late Husband) and Sir Nicholas Strode (the Respondent's Grandfather) and their Heirs in Trust for such Person and such Estate as Sir *Rowland Lytton* should by his Deed or Will appoint, and in Default of such Appointment in Trust for the Right Heirs of Sir *Rowland* for ever.*

3d Settlement by Sir Rowland of Part of the aforesaid Estate, 20 Aug. 1673. Sir *Rowland Lytton*, by his Deed dated the 20th of August, 1673. settled the Manor of *Ansty* upon himself for Life, Remainder to *Rowland* his second Son for 99 Years, if he should so long live, Remainder in Tail Male successively to the first and the other Sons of *Rowland* the Son, Remainder in Fee to the Right Heirs of Sir *Rowland*.

And by the same Deed the Mannors of *Stotfold Newnham* and *Stotfold Brays*, he settled upon the said Sir *Francis Russell* and Sir *Nicholas Strode* and their Heirs in Trust for *Rowland* the Son for 99 Years, if he lived so long, Remainder to his first and other Sons in Tail Male, with Remainder to the Use of the Right Heirs of Sir *Rowland*.

4th Settlement by Sir William Lytton upon his 2d Marriage, 18 June 1687. Sir *William Lytton*, after the Death of Sir *Rowland*, upon his Marriage with Dame *Philippa* his Wife settles his Lands in *Letchworth* of the Value of 70*l. per Annum* upon her for her Jointure with Remainder to his own Right Heirs.

Sir William Lytton's Will, 25 Mar 1700. Sir *William Lytton* made his Will, and his Sister the Appellant, Dame *Anne Russell* and the Respondent Executors thereof and residuary Legatees of his Personal Estate.

And by his said Will devised divers Messuages and Lands in *Letchworth* aforesaid (Part of the ancient

antient Estate comprised in the first Settlement of Sir *Rowland*, to the said Dame *Philippa* his Wife for her Life, and divers other Lands there to her during her Widowhood.

And then follows this Clause :

Item, I give and devise to the said *Lytton Strode*, his Heirs and Assigns for ever, all other my Messuages, Lands, Tenements and Hereditaments (*out of Settlement*) to have, and to hold the said Messuages, Lands, Tenements, Hereditaments and Premisses, with their, and every of their Appurtenances unto the said *Lytton Strode*, his Heirs and Assigns for ever, *Provided always*, and upon this Condition, That the said *Lytton Strode* and his Heirs, or such other Person or Persons, who shall possess and enjoy the said Messuages, Lands and Premisses, or any part thereof; (in case the said Dame *Philippa* my Wife, shall be with Child at the time of my Decease, and shall be delivered thereof after my Decease, and the same shall happen to be a Daughter, or if at the time of my Decease I shall have a Daughter living) shall well and truly pay or cause to be paid unto such Daughter, either born in my Life-time or after my Decease the Sum of 4000*l.* of lawful English Money, at, or in my Mansion House at *Knebworth* aforesaid, at such time as such Daughter shall attain to her Age of Eighteen Years, or Day of Marriage which shall first happen, and in default of Payment thereof, or any part thereof my Will is, and I do hereby give full Power unto such Daughter and her Assignes into the said Messuages, Lands and Premisses, with the Appurtenances to enter and the same to hold, possess and enjoy, until out of the Rents, Issue and Profits thereof she shall be fully satisfied and paid the Sum of 4000*l.* with Interest and Dammages, for the forbearance thereof, from the time the same is above appointed to be paid, together with all reasonable Costs and Dammages occasion'd by such default of Payment.

And also *provided* the said *Lytton Strode*, does change his Sir-name from *Strode* to *Lytton*, and does for the future go and be called by the Name of *Lytton*, and not by the Name of *Strode*; And in case the said *Lytton Strode*, does not change his Sir-name from *Strode* to *Lytton*, as aforesaid, the said Devise and Bequest to him made of the said Messuages, Lands, Tenements and Hereditaments (*out of Settlement*) shall wholly cease and be void, and then, and from henceforth *I Give and Devise* the said Messuages, Lands, Tenements and Hereditaments, with their Appurtenances (*out of Settlement*) unto the said Dame *Ann Russel* her Heirs and Assigns for ever, subject and lyable to the Payment of the said 4000*l.* to such Daughter, in Manner and Form as is provided in the *Proviso* abovementioned and expressed.

And in his said Will no notice whatsoever is taken of the Lady *Falkland*, who was his half Sister.

*Easter-Term, 1706,*  
the Respondent's  
Bill filed.

The Respondent being then and still an Infant by his *Prochein Amy*, exhibited his Bill in Chancery against the Appellants to have a Decree for the quiet enjoyment of all the said Sir *William Lytton*'s real Estate, devised to him by the said Will.

*The Lady Falkland's Crois Bill.* And the Lady *Falkland* exhibited her cross Bill to have a Partition of the real Estate, as one of the Daughters and Co-heirs of Sir *Rowland Lytton*, and that one third Part thereof might be set out for her.

*14th of May, 1708,*  
the Causes heard.

The said Causes came to a Hearing before the said Lord *Chancellor* assisted as aforesaid; And having been attended with Copies of the said Testators, Will, and Abstracts of the Limitations in the several Deeds of Settlement in the Pleadings mentioned, and having considered thereof upon the 16th Day of June last, were unanimously of Oppinion that all the Mannors, Messuages, Lands, Tenements and Hereditaments, whereof the said Sir *William Lytton* was at the time of making his Will seized in Fee, or whereof he then had a disposing Power, and the Reversion and Inheritance thereof did well pass by the said Will to the Respondent, and were decreed for to go and be enjoyed by him.

And the Appellant the Lady *Falkland*'s Bill was to stand dismift.

Which Decree is humbly conceived to be Just.

*1st,* For that the Inheritance of the whole Estate, (Sir *William* having no Issue Male) was at the time of making the Will in his Power to dispose by Deed or Will, and therefore *out of Settlement*.

*2dly,* For that it appears plainly to be the Intent of the said Will, that all his Estate that was in his Power to devise or dispose of should pass by the said Will, to the Intent to preserve them in his Name and Blood. The Respondent being his Eldest Sister's Grandson, and being obliged by the Will to take upon him the Name of *Lytton*, and it cannot be thought that when he was laying a Design to preserve his Estate in his Name, he could design all the Antient Estate of the Family to go to his Heir at Law Female and not of his Name, when he had the same Power to dispose of that as of any other Part of his Estate.

*3dly,* For that he hath actually given Part of this very Estate by his Will to his Wife, to whom he had before made a Joyniture of other Part of it, and so cannot be said as pretended to be Superstitious in that particular, not to dispose of any Part of the Estate he had from his Ancestors.

*4thly,* For that he hath made a Provision by his Will of 4000*l.* for his Daughter, if he should have any; which no Body could think he would ever have done, if he had intended that all the antient Estate of his Family should go to that Daughter; and while he was endeavouring to preserve his Name, to give the Person who was to take his Name so small a Share of his ancient Estate, and to leave that too, with a Charge of 4000*l.* upon it.

That Sir *William Lytton* had a great Regard to his Name, appears by his giving the Respondent the Name of *Lytton*, as his God-father in Baptism, and by obliging him to change his Sir-name of *Strode* to *Lytton*, under the Penalty of losing the Estate if he did not.

Wherefore, 'tis humbly desired, the said Decree may be affirm'd.

Edw. Northev,  
Jo. Pratt.

**Sir William Lytton had Issue**

*Judith Edwards* his first Wife.  
Note, The Settlement on her  
Marriage is dated 28 Sept. 1638.

**Sir Rowland Lytton** had Issue four Children by  
his first Wife, and one by his second Wife, and  
dyed in 1674.

**His second Wife *Rebecca Lacy*.**  
Note, The Settlement on her  
Marriage is dated 12 June, 1661.

1.

**His first Wife *Mary Harrison***, by whom  
he had no Issue.  
Note, The Settlement  
on her Marriage  
age was dated 20 Fe-  
bruary 1665.

2.

**Sir William Lyt-  
ton**, the Testator,  
he dyed without  
Issue the 14th of  
January 1704.

3.

**His 2d Wife was  
*Philippe Keylinge***, who  
is now living, but had  
no Issue by him.  
Note. The Settlement  
on her Marriage is da-  
ted 18 June 1687.

4.

***Judith* married to  
*Sir Nicholas Strode*;**  
both dead, and she  
dyed in 1663, leav-  
ing her Son and  
Heir.

**Now Viscountess Dowager  
*Falkland*.**

***Anne* married Sir  
*Francis Russell*, Barr.**  
and they have Issue  
three Daughters, all  
married.

***Rowland*, who was never married, and  
dyed 1699. Note, The Settlement on him  
is dated 20 August 1673. And other Estates  
were devised to him by his Father's Will,  
dated 5 Septemb. 1674.**

**Sir George Strode**, whose el-  
der Son is

**Sir *John Strode***, to whom **Sir William Lytton** has Devised all his Estate (*out of  
Settlement*) on Condition he change his  
Sir-name to *Lytton*.

## The Lady *Russell*,

A N D

# The Viscountess Falkland.

APPELLANTS

PUBLICATIONS RECEIVED

*Lyttton Lyttton, Esq;*

## The Respondent's Case

To be Heard on Friday the  
18th of February

THE JOURNAL OF

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